IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

CRL.A.No. 1114 of 2002()

SC.218/2000 of ADDL.DISTRICT AND SESSIONS JUDGE FAST TRACK (AD HOC-II) KOZHIKODE

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APPELLANT: ACCUSED:

RADHAKRISHNAN, S/O. KUNHIRAMAN NAIR,
KAIYEKKANDY HOUSE, KOYILANDY TALUK.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.1114 of 2002(D)

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Dated this the 16th day of October, 2007

J U D G M E N T

The appellant is the accused in S.C.No.218/2000 who stands convicted for the offence under Section 55(a) of the Abkari Act and Rule 9 of the Foreign Liquor Rules and sentenced to undergo rigorous imprisonment for two years and to pay a fine of rupees one lakh and in default to undergo simple imprisonment for six months.

2. The prosecution case is that on 20/09/1998 at 12 noon, the accused was found carrying six bottles of 180 ml of XXX Bull Head Rum while travelling in a bus bearing registration No. KED 6759 through the National Highway in front of the Excise Check Post at Azhiyoor and that he was not having any permit.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 7 and Exts.P1 to P9 and MO.1. Defence got marked Exts.D1 to D4. PWs.3 and 4 the independent

witnesses, i.e., the conductor and driver of the bus did not support the prosecution. PW.6 is the Village Officer. PWs.1 and 2, the Excise Inspector and the Preventive Officer respectively are the persons who detected the offence. According to PWs.1 and 2 the accused was travelling from Mahe to Vadakara in the bus which was proceeding from Thalassery to Vadakara. The point raised by the counsel for the appellant is that there is no convincing evidence to establish the fact that the accused was proceeding from Mahe to Vadakara in which case only the offence under Rule 9 of the Foreign Liquor Rules can be attracted. It is pointed out that as per Ext.P1 Mahazar, PW.1 has taken into custody the bus ticket No.60 for a sum of Rs.3.30. It was brought out from the evidence of PW.1 that he was convinced that the accused was travelling from Mahe on the basis of the fare collected vide the bus ticket seized. The bus ticket was not produced before the court. It is pointed out that had the accused travelled from Thalassery to Madappally, which is situated in Vadakara, the offence would not be attracted. Only if the accused boarded the bus from Mahe which is within the then Union Territory of Pondicherry, the illegal import as

envisaged under Rule 9 of the Foreign Liquor Rules would be attracted. It was also pointed out that the total quantity would work out to only 1.08 litres, which is within the permissible quantity, i.e., 1.5 litres had the accused been in possession of the above quantity in the State of Kerala. In the circumstances, non production of the bus ticket assumes the significance. Hence, I find that the accused is entitled for the benefit of doubt. The conviction and sentence is set aside. The accused is acquitted. The criminal appeal is allowed.

K.R.UDAYABHANU,
Judge

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